

For information

LegCo Panel on Public Service

**Civil servants' freedom and right to join trade unions
and take part in trade union activities**

Follow-up to meeting on 19 June 2006

Purpose

As requested by Members at the meeting on 19 June 2006, this paper provides information in response to Members' concern about the non-application of the Employment Ordinance (EO) (Cap. 57) to the Government and the protection of the right of non-civil service contract (NCSC) staff to join trade unions and take part in trade union activities.

Supplementary information

2. Notwithstanding that the EO does not bind the Government, it is the Government's clear and established policy that the employment terms of government employees should be no less favourable than those provided for under the EO. The employment terms for NCSC staff are therefore formulated with reference to the provisions under the EO and incorporated in their employment contracts, which are legally binding on the Government. We have set out this policy clearly in the detailed guidelines issued to Heads of Department on the employment of NCSC staff and to the public through the webpage of the Civil Service Bureau. We have also made reference to this policy at various meetings of this Panel.

3. The above policy means that NCSC staff enjoy no less protection against anti-union discrimination than that provided under Part IVA of the Employment Ordinance, that is –

- (a) they have the right to become members or officers of trade unions registered under the Trade Unions Ordinance (Cap. 332) and participate in activities of the trade unions that they have joined at any appropriate time; and
- (b) their employing bureaux or departments will not –
 - (i) prevent or deter or do any act calculated to prevent or deter them from exercising the above right;
 - (ii) terminate their contracts of employment, penalize, or otherwise discriminate against them by reason of their exercising the above right; or
 - (iii) ask them to relinquish their right of participating in trade union activities as a condition for offering employment.

4. The imposition of criminal liability on the Government or public officers has already been discussed by the LegCo Panel on Administration of Justice and Legal Services in June 2004 and February 2006. The Government's position remains that our legal policy of not imposing criminal liability on the Government or public officers should be retained. However, there are well-established channels for government employees, be they civil servants or NCSC staff, to lodge complaints about or to seek redress of any perceived unfair employment terms or contractual provisions. Furthermore, a civil servant or NCSC staff who considers that the Government, as his employer, has violated, or threatened to violate, his right to join trade union and take part in union activities under Article 18 of the Hong Kong Bill of Rights may seek civil remedy or relief under section 6(1) of the Hong Kong Bill of Rights Ordinance (Cap. 383).